



DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR PART 239

DOD-2009-OS-0090; RIN 0790-AI83

Homeowners Assistance Program – Application Processing

AGENCY: Under Secretary of Defense for Acquisition, Technology, and Logistics, Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes non-substantive changes to the Expanded Homeowners Assistance Program (HAP) rule. The Expanded HAP, authorized in the American Recovery and Reinvestment Act for 2009 (“the Act”), provided much needed assistance to military and civilian employees, and spouses of military members who died in the line of duty. However, the Expanded HAP eligibility criteria established in the Act, including those criteria that were subsequently changed through administrative rulemaking procedures, did not establish a deadline for when applications must be submitted to DoD. These changes inform applicants of application deadlines and the current field office address for submitting applications. These changes do not impact the eligibility criteria or other policies and procedures prescribed in the rule.

DATES: This direct final rule is effective [INSERT DATE OF 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] unless Agency receives significant adverse comments by midnight Eastern Standard Time on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Phyllis Newton, 703-571-9060.

SUPPLEMENTARY INFORMATION: Due to funding limitations, in the Expanded HAP Final Rule, the Permanent Change of Station (PCS) eligibility criterion date for when PCS orders needed to be issued was changed from September 30, 2012, to September 30, 2010, but the Final Rule retained the September 30, 2012, date for when the house must be sold. In accordance with the Act, the Base Realignment and Closure (BRAC) 2005 eligibility criterion will terminate on September 30, 2012, a full year after implementation of the BRAC 2005 round. It is appropriate to establish application deadlines for Expanded HAP benefits for the PCS and BRAC 2005 categories. To that end, this rule will amend 32 CFR Part 239 by adding two paragraphs to Section 239.9(a) to establish the application deadlines. This change does not eliminate anyone's eligibility; rather it simply requires filing of applications in a timely manner. Submission of the applications by the specified deadlines is sufficient even if further documentation is required.

Additionally, the amendment will revise the HAP Field Office address for the submission of HAP applications. The three former field offices were consolidated into one field office in Savannah, Georgia.

The prompt implementation of the Direct Final Rule is of critical importance. Due to the current economic climate, continuing the Expanded HAP provisions for PCS and BRAC 2005 categories is no longer viable. This Direct Final Rule makes nonsubstantive changes to the Expanded HAP rule. These changes inform applicants of application deadlines and the current field office address for submitting applications. These changes do not impact the eligibility criteria or other policies and procedures prescribed in the rule.

Additionally, the Department of Defense has determined that these changes to the final rule are exempt from public comment as the application deadline is the same as the program

termination deadline for the Expanded HAP that was previously established and codified in the final rule and the change of address for the field office is an administrative change.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Expanded HAP. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate; or (2) why the direct final rule will be ineffective or unacceptable without a change. A significant adverse comment is not a comment that addresses the order of application processing, the ten percent home value loss, and the date of home purchase. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Summary

I. Purpose of the Regulatory Action

- a. The Expanded Homeowners Assistance Program (HAP), authorized in the American Recovery and Reinvestment Act of 2009 (“the Act”), provided much needed assistance to military and civilian employees, and spouses of military members who died in the line of duty. However, the Expanded HAP eligibility criteria established in the Act, including those criteria that were subsequently changed through administrative rulemaking procedures, did not establish a deadline for when applications must be submitted to DoD. Based on reductions in

the Defense budget in Fiscal Year 2012 and beyond, continuing the Expanded HAP provisions for Permanent Change of Station (PCS) and Base Realignment and Closure (BRAC) 2005 categories is no longer viable. In the Expanded HAP Final Rule, the PCS eligibility criterion date was changed from September 30, 2012, to September 30, 2010, due to funding limitations. However, the Department continues to receive more than 100 eligible applications per month for the PCS category. Per the Act, the BRAC 2005 eligibility criterion will terminate on September 30, 2012, a full year after the statutory completion of the BRAC 2005 round. It is now time to establish application deadlines for Expanded HAP benefits for the PCS and BRAC 2005 categories. To that end, this rule will amend 32 CFR Part 239 by adding two paragraphs to Section 239.9(a) to establish the application deadlines.

- b. 42 United States Code, Section 3374, as amended.

II. Summary of the Major Provisions of the Regulatory Action in Question

The HAP Rule, Section 239.9(a) will be amended to add application deadlines for the submission of PCS and BRAC 2005 benefits. This change does not eliminate anyone's eligibility; rather it simply requires filing of applications in a timely manner. Submission of the applications by the specified deadlines is sufficient even if further documentation is required. Additionally, the amendment will revise the HAP Field Office address for the submission of HAP applications. The three former field offices were consolidated into one field office in Savannah, Georgia.

III. Costs and Benefits

There is no cost to the public. The Department of Defense administrative costs for implementation of the authorities under this rule are eight (8) percent of the funds appropriated to execute the Expanded HAP. Workload will be accomplished with additional staffing and be integrated into normal business.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been determined that this rule is a significant regulatory action.

This rule does not:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or

(3) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

This rule does:

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

OMB has reviewed this rule.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

It has been certified that 32 CFR part 239 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that 32 CFR part 239 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that this rule does impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The HAP Application is approved under OMB Control Number 0704-0463.

e. Executive Order 13132, “Federalism”

It has been certified that 32 CFR part 239 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of

Government.

List of Subjects in 32 CFR Part 239

Government employees; Grant programs-housing and community development; Housing; Military personnel.

Accordingly, 32 CFR Part 239 is amended as follows:

PART 239 – [AMENDED]

1. The authority citation for Part 239 continues to read as follows:

Authority: 42 U.S.C. 3374, as amended.

2. Section 239.9 is amended by adding paragraphs (a)(1) and (2) to read as follows:

§ 239.9. Application processing procedures.

(a) * * *

(1) Applications for benefits by members of the Armed Forces due to eligibility pursuant to § 239.6(a)(4) of this part because of permanent reassignment must be submitted directly to the U.S. Army Corps of Engineers field office identified in § 239.15 of this part by U.S. Mail or commercial delivery service, and must be postmarked or deposited with the commercial delivery service no later than September 30, 2012. Applications postmarked or deposited after September 30, 2012, will not be accepted.

(2) Applications of eligible personnel for benefits due to eligibility pursuant to § 239.6(a)(3) of this part because of BRAC 2005 must be submitted directly to the U.S. Army Corps of Engineers field office identified in § 239.15 of this part by U.S. Mail or commercial delivery service, and must be postmarked or deposited with the commercial delivery service no later than September 30, 2012. Applications postmarked or deposited after September 30, 2012, will not be accepted.

* * * * *

3. Section 239.15 is revised to read as follows:

§ 239.15. List of HAP Field Offices.

HAP FIELD OFFICE

US Army Engineer District, Savannah

Corps of Engineers

Attn: CESAS-RE-HM

100 West Oglethorpe Avenue

Savannah, Georgia 31401-3604

1-800-861-8144

Internet Address: <http://www.sas.usace.army.mil>

HAP CENTRAL OFFICE

Homeowners Assistance Program

HQ U.S. Army Corps of Engineers Real Estate Directorate

Military Division

441 G Street, NW.

Washington, DC 20314-1000.

DATED: June 29, 2012.

PATRICIA L. TOPPINGS

OSD Federal Register

Liaison Officer

Department of Defense

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